

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DAVID LEE HURT,**

**Petitioner,**

**v.**

**Civil Action No. 2:03cv80**

**THOMAS McBRIDE, Warden,**

**Respondent.**

**ORDER**

It will be recalled that on January 24, 2005, Respondent filed a Consolidated Answer, Motion to Dismiss, Motion for Summary Judgment and Memorandum in Support. On September 6, 2005, Magistrate Judge Kaull filed his Report and Recommendation regarding the Respondent's Motion to Dismiss and Motion for Summary Judgment, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On September 21, 2005, the Court received the Petitioner's Objections to Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, and the issues raised by the Respondent in his Motion to Dismiss and Motion for Summary Judgment, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Furthermore, upon careful consideration of the Petitioner's objections, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all

matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that Respondent's Motion to Dismiss and Motion for Summary Judgment shall be, and the same hereby are, **GRANTED**. It is further

**ORDERED** that the petition of David Lee Hurt, filed pursuant to 28 U.S.C. §2254 be, and the same hereby is, **DENIED**. It is further

**ORDERED** that the above-styled action be, and the same hereby is, **DISMISSED WITH PREJUDICE** and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Respondent. It is further

**ORDERED** that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4, Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a), Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** January 20<sup>th</sup>, 2006

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**/s/ Robert E. Maxwell**  
United States District Judge